

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
<b>D &amp; D CONSTRUCTION SERVICES, INC.</b>	NO. 2008-AQ- 19 NO. 2008-SW- 13
<b>Pottawattamie County, Iowa</b>	

TO: D&D Construction Services, Inc.  
Attn: Dennis Collins  
827 E. S. Omaha Bridge Road  
Council Bluffs, IA 51503

Michael S. Mostek  
Koley Jessen P.C., L.L.O.  
One Pacific Place, Suite 800  
1125 South 103<sup>rd</sup> Street  
Omaha, NE 68124

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and D&D Construction Services, Inc. (D&D) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and improper disposal of solid waste violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Dan Stipe, Supervisor  
DNR Field Office 4  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which

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authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. D&D neither admits nor denies the Statements of Facts and enters into this administrative consent order for settlement purposes only.

2. D&D is a construction and environmental remediation company based out of Council Bluffs, Iowa. Frank Sollazzo owns a parcel of property located in Section 14, T75N, R42W, Pottawattamie County, and locally known as 20394 Husker Lane, Council Bluffs, Iowa. The site is approximately 28 acres in size. D&D Construction has routinely used this site for disposal of solid waste for an extended period of time. Mr. Sollazzo had given Mr. Collins permission to dispose of wet soil and beneficial fill on the property to fill washout areas.

3. In 2002, DNR issued D&D a Notice of Violation (NOV) letter for improper application of PCS.

4. In 2005, D&D was informed by letter that application of PCS now required a permit. D&D's permit application to land farm PCS at a site unrelated to the Sollazzo site was reviewed and eventually denied for lack of supporting documentation.

5. On April 26, 2007, DNR Field Office 4 received a complaint alleging that PCS was being improperly disposed of at the Sollazzo site. Thad Nanfite, DNR Field Office 4, conducted a preliminary investigation of the site. During the investigation, Mr. Nanfite observed construction and demolition waste and PCS at the site. It was determined that the PCS discovered on the property was hauled to the site by D&D. The contaminated soil had been scraped off the parking lot of a convenience store where underground storage tanks had been removed. The construction and demolition debris originated from a drive-in movie theater in Council Bluffs. Mr. Sollazzo stated that he allowed Mr. Collins of D&D to haul dirt and trees to the ditch behind his residence and to deposit material on the site. During the investigation, Mr. Sollazzo called Mr. Collins who stated, according to Mr. Sollazzo, that some waste which should have gone to a landfill was mistakenly brought to the Sollazzo site.

6. On May 4, 2007, DNR Field Office 4 personnel received a phone call from Mr. Collins of D&D. Mr. Collins stated that D&D would see to the removal of the wood waste from the site. He further stated that the waste materials at the Sollazzo site had come from the former drive-in theater in Council Bluffs. DNR personnel explained that there were concerns that asbestos containing material was present in the waste at the Sollazzo site. Mr. Collins stated that asbestos testing had been completed as part of the demolition project.

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7. On May 23, 2007, Keith Wilken, Field Office 4 and Tom Wuehr, DNR Air Quality conducted a follow-up inspection at the Sollazzo site. During the inspection, samples of suspected asbestos containing material were collected for analysis. One of the samples was a natural gas pipe with suspect wrap remaining on it. Upon receipt of the laboratory results it was confirmed that regulated quantities of asbestos containing material were present in the wrap of the natural gas pipe.
8. On June 8, 2007, DNR Field Office 4 personnel contacted D&D and informed Mr. Collins not to remove any of the waste materials from the site until DNR decided how to proceed. During the call, Mr. Collins informed DNR that Council Bluffs Industrial Foundation (CBIF) owned the former drive-in theater where the waste had originated and that Peterson Contractors, Inc. (PCI) was responsible for the demolition project.
9. On June 14, 2007, DNR Field Office 4 personnel contacted D&D. Mr. Collins stated that PCI did the demolition work and D&D only hauled the waste materials to the site. Mr. Collins stated that D&D trucks were hired by PCI to haul the construction and demolition waste. D&D also faxed a letter from Terracon, a consulting and engineering group, regarding the asbestos abatement at the drive-in theater. The letter stated that no further asbestos containing material remained in the drive-in theater structures.
10. On June 15, 2007, DNR Field Office 4 personnel conducted another inspection of the Sollazzo site at the request of PCI. The purpose of the visit was to discuss the abatement and disposal of the waste materials from the site. Mr. Fleschner, PCI Project Manager, stated that he would discuss the issues with Mr. Sollazzo and then develop a plan to remedy the situation. DNR was later notified PCI would remove all of the debris above ground.
11. On June 22, 2007, DNR issued a NOV letter to the four parties involved with the improper disposal of solid waste at the Sollazzo site: Frank Sollazzo, D&D, CBIF, and PCI. The letter required that the parties submit a plan of action (POA) regarding the cleanup and disposal of waste material. On July 6, 2007, PCI submitted a POA to DNR regarding the asbestos abatement and removal of the solid waste items from the Sollazzo site.
12. On or around August 21, 2007, PCI contacted Matt Rhodes at DNR Field Office 4 that the clean up of the surface material had been completed by PCI. PCI stated that approximately 400 tons of debris, including the natural gas pipe, was taken to a landfill in David City, Nebraska. All of the debris was taken to the landfill as asbestos containing waste.
13. At the request of the DNR, Mr. Collins trenched several areas of the Sollazzo site and removed soil and solid waste from the site. Mr. Collins stated that his company has spent approximately \$35,000.00 in trenching, removing, grading and seeding at the Sollazzo as a required by the DNR.

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**IV. CONCLUSIONS OF LAW**

1. D&D neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.
2. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.
3. 40 CFR 61.150(b)(1) requires that all asbestos containing waste material be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with 40 CFR 61.154 for active waste disposal sites. The asbestos containing waste from the demolition was not disposed of at an acceptable disposal site. The laboratory results confirmed that the material which came from the demolition of the drive-in theater included asbestos containing material. D&D hauled and deposited the drive-in theater waste, which had not been treated as required by the NESHAP regulation, at the Sollazzo site. The above facts demonstrate non-compliance with this provision.
4. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.
5. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. Substantial amounts of improperly deposited solid waste have been found at the Sollazzo site. D&D has acknowledged previous use of the Sollazzo site for dumping and that its trucks and drivers were used in the transportation of the demolition waste from the Council Bluffs drive-in theater to the Sollazzo site. The above facts demonstrate non-compliance with this provision.
6. 567 IAC 120.4(1) states that petroleum containing soil shall not be landfarmed without a permit from DNR. On April 26, 2007, DNR staff documented improper disposal of PCS by D&D on the Sollazzo property. The above facts demonstrate non-compliance with this provision.

**V. ORDER**

THEREFORE, the DNR orders and D&D agrees to do the following:

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1. D&D shall comply with all applicable asbestos and solid waste rules in the future; and
2. D&D shall pay a penalty of \$3,100.00 within 30 days of the date from which the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,100.00. The administrative penalty is determined as follows:

Economic Benefit – Failure to properly dispose of the solid waste may have allowed D&D to save time and money. However, any economic benefit D&D received was minimal because of the extensive cleanup of the area as a result of the DNR's investigation. Therefore, no economic benefit is being assessed in this administrative consent order.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to properly dispose of solid waste and properly abate asbestos contaminated materials threatens the integrity of the regulatory program. Tax dollars were expended to investigate, document, and respond to this violation. Improper PCS and solid waste disposal as well as failure to properly abate asbestos contaminated waste can degrade water quality and contribute contaminants to both land and water resources as well as threaten the public health. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – D&D has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. D&D has been previously issued an NOV for improper application of PCS and has been apprised of the

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requirements for permits regarding the PCS regulations. Based on the above considerations, \$1,100.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of D&D. For that reason D&D waives its rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 11 day of  
July, 2008.

  
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For D&D Construction Services, Inc.

Dated this 24 day of  
June, 2008.

Barb Stock (Con 10-6 Pottawattamie County); Kelli Book; Field Office 4; Dan Stipe; VI.D., VII.C.1, and VII.C.4